

HOUSE BILL No. 1636

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5; IC 32-8-15.5.

Synopsis: Consumer credit payoffs and releases. Requires a creditor or mortgage servicer to provide an accurate and reliable consumer credit payoff amount. Provides that if a creditor or mortgage servicer does not provide an accurate consumer credit payoff amount, the creditor or mortgage servicer may not require the debtor to pay the difference between the payoff amount and the actual amount. Allows a one year period ending June 30, 2002, for a title insurance company to release a mortgage given to secure a loan of not more than \$1,000,000 on behalf of the mortgagor and mortgagee.

Effective: July 1, 2001.

Goodin, Smith M, Mahern

January 17, 2001, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1636

A BILL FOR AN ACT to amend the Indiana Code concerning consumer credit.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-4.5-2-209, AS AMENDED BY P.L.23-2000,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 209. Right to Prepay - (1) Subject to the
4 provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer
5 may prepay in full the unpaid balance of a consumer credit sale,
6 refinancing, or consolidation at any time without penalty.
7 (2) At the time of prepayment of a credit sale not subject to the
8 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total
9 credit service charge, including the prepaid credit service charge but
10 excluding the loan origination fee allowed under IC 24-4.5-3-201, may
11 not exceed the maximum charge allowed under this chapter for the
12 period the credit sale was in effect.
13 (3) The creditor or mortgage servicer shall provide an accurate **and**
14 **reliable** payoff of the consumer credit sale to the debtor within ten (10)
15 calendar days after the creditor or mortgage servicer receives the
16 debtor's written request for the accurate consumer credit sale payoff
17 amount. A creditor or mortgage servicer who fails to provide the

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accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) A creditor or mortgage servicer who fails to provide an accurate and reliable consumer credit sale payoff amount may not require a debtor or the debtor's agent to repay the difference between the amount represented in the payoff statement and the actual amount.

SECTION 2. IC 24-4.5-3-209, AS AMENDED BY P.L.23-2000, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of the net unpaid balance after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

(a) if the loan is refinanced or consolidated with the same creditor;

(b) for prepayment by proceeds of any insurance or acceleration after default; or

(c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total

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1 finance charge, including the prepaid finance charge but excluding the
 2 loan origination fee allowed under IC 24-4.5-3-201, may not exceed the
 3 maximum charge allowed under this chapter for the period the loan was
 4 in effect.

5 (3) The creditor or mortgage servicer shall provide an accurate **and**
 6 **reliable** payoff of the consumer loan to the debtor within ten (10)
 7 calendar days after the creditor or mortgage servicer receives the
 8 debtor's written request for the accurate consumer loan payoff amount.
 9 A creditor or mortgage servicer who fails to provide the accurate
 10 consumer loan payoff amount is liable for:

11 (A) one hundred dollars (\$100) if an accurate consumer loan
 12 payoff amount is not provided by the creditor or mortgage
 13 servicer within ten (10) calendar days after the creditor or
 14 mortgage servicer receives the debtor's first written request;
 15 and

16 (B) the greater of:

17 (i) one hundred dollars (\$100); or

18 (ii) the loan finance charge that accrues on the loan from the
 19 date the creditor or mortgage servicer receives the first
 20 written request until the date on which the accurate
 21 consumer loan payoff amount is provided;

22 if an accurate consumer loan payoff amount is not provided by
 23 the creditor or mortgage servicer within ten (10) calendar days
 24 after the creditor or mortgage servicer receives the debtor's
 25 second written request, and the creditor or mortgage servicer
 26 failed to comply with clause (A).

27 A liability under this subsection is an excess charge under
 28 IC 24-4.5-5-202.

29 (4) **A creditor or mortgage servicer who fails to provide an**
 30 **accurate and reliable consumer credit sale payoff amount may not**
 31 **require a debtor or the debtor's agent to repay the difference**
 32 **between the amount represented in the payoff statement and the**
 33 **actual amount.**

34 SECTION 3. IC 32-8-15.5 IS ADDED TO THE INDIANA CODE
 35 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2001]:

37 **Chapter 15.5. Mortgage; Release by Title Insurance Company**

38 **Sec. 1. As used in this chapter, "mortgage" means a mortgage**
 39 **or mortgage lien on an interest in real property in Indiana given to**
 40 **secure a loan in the original principal amount of not more than one**
 41 **million dollars (\$1,000,000).**

42 **Sec. 2. As used in this chapter, "mortgagee" means:**

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- (1) the grantee of a mortgage; or
- (2) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

Sec. 3. As used in this chapter, "mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage service for the mortgage described in the payoff statement.

Sec. 4. As used in this chapter, "mortgagor" means the grantor of a mortgage.

Sec. 5. As used in this chapter, "payoff statement" means a statement of the amount of:

- (1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and
- (2) interest on a per day basis for the unpaid balance.

Sec. 6. As used in this chapter, "person" means an individual, a corporation, or any other legal entity.

Sec. 7. As used in this chapter, "record" means to record with the county recorder.

Sec. 8. As used in this chapter, "title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

Sec. 9. An officer or duly appointed agent of a title insurance company may, on behalf of a mortgagor or a person who acquired from the mortgagor a lien against all or part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this chapter and record the certificate of release in the real property records of each county in which the mortgage is recorded if:

- (1) a satisfaction or release of the mortgage has not been executed and recorded within sixty (60) days after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer; and
- (2) the title insurance company, an officer of the title insurance company, or an agent of the title insurance company, has sent to the last known address of the mortgagee or the mortgage servicer, at least thirty (30) days before executing the certificate of release, written notice of its

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intention to execute and record a certificate of release in accordance with this section after the expiration of the sixty (60) day period.

Sec. 10. A certificate of release executed under this chapter must contain substantially all of the following:

(1) The name of the mortgagor, the name of the original mortgagee and, if applicable, the name of the mortgage service, the date of the mortgage, the date of recording of the mortgage, and the volume and page or instrument number for the mortgage in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage.

(2) A statement that the mortgage was in the original principal amount of not more than one million dollars (\$1,000,000).

(3) A statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

(4) A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired a lien from the mortgagor against all or part of the property described in the mortgage.

(5) A statement that the mortgagee or mortgage service provided a payoff statement that was used to make payment in full of the unpaid balance of the loan secured by the mortgage.

(6) A statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement, and received by the mortgagee or mortgage servicer, as evidenced in the records of the title insurance company or its agents by:

(A) a bank check;

(B) a certified check;

(C) an escrow account check from the title company or title insurance agent;

(D) an attorney trust account check that has been negotiated by the mortgagee or mortgage servicer; or

(E) any other documentary evidence of payment to the mortgagee or mortgage servicer.

(7) A statement indicating that more than sixty (60) days

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have elapsed since the date payment in full was sent.

(8) A statement that after the expiration of the sixty (60) day period in section 9 of this chapter, the title insurance company, its officers, or its agent sent to the last known address of the mortgagee or mortgage servicer, at least thirty (30) days before executing the certificate of release, notice in writing of its intention to execute and record a certificate of release as required under this section, with an unexecuted copy of the proposed certificate of release attached to the written notice.

(9) A statement that neither the title insurance company nor its officers or agent have received notification in writing of any reason why the certificate of release should not be executed and recorded after the expiration of the thirty (30) day notice period in section 9 of this chapter.

Sec. 11. A certificate of release authorized by this chapter shall be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.

Sec. 12. (a) A title insurance company may authorize a duly appointed agent of the title insurance company to execute certificates of release in accordance with the requirements of this chapter by recording a notice of authorization in the office of the county recorder for each county in which the duly appointed agent is authorized to execute and record certificates of release on behalf of the title insurance company stating the following:

(1) The name of the title insurance company that is authorizing a duly appointed agent to execute certificates of release on behalf of the title insurance company.

(2) The identity of the person who is a duly appointed agent of the title insurance company and who is authorized to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(3) That the duly appointed agent has full authority to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(b) The notice of authorization shall be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.

(c) A single notice of authorization recorded in the office of a county recorder in accordance with the requirements of this

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1 section constitutes the authority of the duly appointed agent to
2 execute and record certificates of release in that county on behalf
3 of the title insurance company. A separate notice of authority is not
4 required for each certificate of release recorded by a duly
5 appointed agent.

6 (d) The authority granted to a duly appointed agent by a title
7 insurance company in accordance with the requirements of this
8 section continues until a revocation of the notice of authorization
9 is recorded in the office of the county recorder for the county in
10 which the notice of authorization was recorded.

11 (e) The delegation of authority to a duly appointed agent by a
12 title insurance company in accordance with the requirements of
13 this section does not relieve the title insurance company of any
14 liability for damages caused by the duly appointed agent for the
15 wrongful or erroneous execution and recording of a certificate of
16 release.

17 Sec. 13. A certificate of release prepared, executed, and
18 recorded in accordance with the requirements of this chapter
19 constitutes a release of the mortgage described in that certificate
20 of release, and the county recorder shall enter and index the
21 certificate of release in the same manner that a release or
22 satisfaction of mortgage is entered and indexed in the records of
23 the county recorder.

24 Sec. 14. (a) The execution and recording of a wrongful or
25 erroneous certificate of release by a title insurance company or a
26 duly appointed agent with authority from a title insurance
27 company does not relieve the mortgagor, or anyone succeeding to
28 or assuming the interest of the mortgagor, from any liability for
29 the debt or other obligations secured by the mortgage that is the
30 subject of the wrongful or erroneous certificate of release.

31 (b) Additionally, a title insurance company or a duly appointed
32 agent with authority from a title insurance company that
33 wrongfully or erroneously executes and records a certificate of
34 release is liable to the mortgagee, or the assignee of the mortgagee
35 if the mortgage has been assigned, for actual damages sustained
36 due to the recording of a wrongful or erroneous certificate of
37 release.

38 Sec. 15. (a) This chapter applies to the release of a mortgage
39 after June 30, 2001, and before July 1, 2002, regardless of when the
40 mortgage was created or assigned.

41 (b) This chapter expires July 1, 2002.

